

Exhibit A

From: **Pete Blackmer** <peteb@fusedsolutions.com>
Date: Thu, Jul 26, 2012 at 2:48 PM
Subject: Union Voting Clarification
To: All Employees <employees@fusedsolutions.com>

All,

I have just been informed that there have been rumors that a lack of voting is the same as a No vote. This is absolutely not the case. If you want your voice to be heard you must vote.

Polls will be opened again from 4pm until 8pm.

Also don't forget it is a secret ballot and even if you had previously signed a union card you can still vote either way.

Thank you,
Pete

Pete Blackmer | **CTO/COO** | Fused Solutions LLC

e-mail: peteb@fusedsolutions.com
site: <http://www.fusedsolutions.com>
office: [315 265 3400](tel:3152653400)
direct: [315 261 7304](tel:3152617304)
mobile: [315 244 1969](tel:3152441969)

Exhibit B

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Fused Solutions, LLC

Employer

and

United Food and Commercial Workers,
District Union Local One

Petitioner

Case No. 03-RC-083193 Date Filed 6/15/12

Date Issued: July 26, 2012

Type of Election (check one) If applicable, check either or both

☒ Stipulation

☐ Board Direction

☐ Mail Ballot

☐ 8(b)(7)

☐ Consent Agreement ☐ Mail Ballot

☐ RD Direction

☐ Incumbent Union (Code)

OVERALL

TALLY OF BALLOTS

OVERALL

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows.

- | | |
|---|-----------|
| 1. Approximate number of eligible voters | <u>44</u> |
| 2. Number of Void Ballots | <u>0</u> |
| 3. Number of Votes cast for <u>United Food and Commercial Workers, District Union Local One</u> | <u>19</u> |
| 4. Number of Votes cast against participating labor organization | <u>9</u> |
| 5. Number of Valid votes counted (sum of 3, 4) | <u>28</u> |
| 6. Number of Challenged ballots | <u>6</u> |
| 7. Number of Valid votes counted plus challenged ballots (sum of 5 and 6) | <u>34</u> |
| 8. Challenges are <u>[NOT]</u> sufficient in number to affect the results of the election | |
| 9. A majority of the valid votes counted plus challenged ballots (Item 6) has <u>[X]</u> been cast for: | |

United Food and Commercial Workers, District Union Local One

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For: Fused Solutions, LLC

For: United Food and Commercial Workers,
District Union Local One

X [Signature]

X [Signature]

Exhibit C

NATIONAL LABOR RELATIONS BOARD

Fused Solutions, LLC)	
)	
Employer)	
)	Case No. 03-RC-083193
And)	
)	
UFCW Local One)	
)	
Petitioner)	

EMPLOYER'S OBJECTION TO CONDUCT AFFECTING THE RESULTS OF ELECTION

Fused Solutions, LLC, by its undersigned counsel, hereby objects to the certain conduct of the union, union supporters and/or the Board Agent that improperly affected the results of the representation election that was conducted on July 26, 2012. The grounds for this objection, as set forth in greater detail below, are: 1) that paid union organizers for the UFCW engaged in conduct that interfered with the election process by misrepresenting to employees who were not in favor of the union that, if they decided not to vote, they would be counted as a "no" vote; and 2) that the conduct of union organizers, supporters, and/or the Board Agent interfered with the election process by creating a false impression among the group of 10 employees who had been hired on June 18, 2012 that they were not eligible to vote or that their votes would not be counted.

Misrepresentations by the Paid Union Organizers

Fused Solutions operates a call center that provides customer service and technical support services to inbound callers. Fused Solutions is located in Potsdam, New York. It operates 24 hours a day, 365 days a year. Many of its employees work from home by using "remote" computer connections to the Fused telephone and computer systems. Those employees would have had to make a special trip to the Fused offices to vote in the election.

The election was held on Thursday July 26 at the offices of Fused Solutions. The polls were open from 7 to 9 am and 4 to 8 pm. At approximately 2:45 pm on the day of the election, Matthew Maroun, a Supervisor in the Fused Solutions' call center approached Sherman Taylor, a Level 1 Customer Service Tech, as he was reporting for his shift and asked him to let Mr. Maroun know when he wanted to take a break to vote. Mr. Taylor told Mr. Maroun that he did not need to vote. Mr. Maroun asked him why he did not think he needed to vote. Mr. Taylor responded that he had been told by a union organizer who came to his house about a week prior to the election that not voting was the equivalent of voting "no".

At about that same time, Mr. Maroun was approached by another Level 1 Tech, Christina Hooper, who told him that she also was under the impression that not voting would be counted by the National Labor Relations Board as a "no" vote. Ms. Hooper told Mr. Maroun that many of the other Techs were under the same impression, based upon comments that had been made to them by union organizers.

After Mr. Maroun had these discussions with Mr Taylor and Ms. Hooper, he reported them to his supervisor, Pete Blackmer, CTO/COO of Fused Solutions. At approximately 3 pm, Mr. Blackmer sent an email to all Techs informing them that a rumor had been circulating that if they did not vote it would be counted as a "no". The email stated the rumor was not correct, and if the Techs wanted their vote to count, they needed to come to the call center and vote. Fused has no way of knowing if that email reached all of the eligible voters who were under the misimpression that failure to vote would be counted as a "no."

There were approximately 44 eligible voters. Ten of those people did not vote. Of the remaining 34 eligible voters, 6 ballots were challenged, 9 votes were counted against the UFCW, and 19 votes were counted in favor of the UFCW. The challenged ballots were not reviewed because they were not determinative. Thus, the outcome of election was decided by the votes of

less than 50% of the eligible voters. If just over half of the challenged ballots and the votes of those who did not vote were counted against the UFCW, the UFCW would have lost the election.

Fused believes that the affirmative misrepresentations made by paid union organizers led a number of eligible voters who would otherwise have voted "no" to refrain from voting based upon the mistaken belief that, if they did not vote, they would be counted by the NLRB as a "no" vote. Accordingly, Fused asks that the election be set aside.

Confusion Regarding the Eligibility of the Employees Hired on June 18, 2012

Prior to the election, the UFCW took the position that Fused had hired ten new employees on June 18, 2012 to "dilute" the pool of eligible voters and increase its chances of winning the election. The union made this position known to the Board and to Fused. Based upon this position, the union challenged the ballots of all four employees who were hired on June 18, 2012 who attempted to vote. When these challenges occurred, a number of employees began to question whether any of the employees who had been hired on June 18 were eligible to vote. One employee in particular, James Nachamkin, emerged from the polling place unsure if he had done something wrong by trying to vote and concerned that his vote would not be counted.

Fused believes that the statements made by union organizers, supporters, and/or the Board Agent caused the ten employees who had been hired on June 18, 2012 to question whether they were eligible to vote and caused some of them to refrain from voting based upon the mistaken belief that they were not eligible or that their vote would not be counted. Accordingly, Fused asks that the election be set aside

Dated at Portland, Maine this 1st day of August, 2012


Glenn Israel
Linda D. McGill
Counsel for Fused Solutions, LLC

Bernstein Shur
100 Middle Street
PO Box 9729
Portland, ME 04104-5029
207-774-1200

Exhibit D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

FUSED SOLUTIONS, LLC
Employer

Case 3-RC-83193

and

**UNITED FOOD AND COMMERCIAL WORKERS,
DISTRICT UNION LOCAL ONE**

Petitioner

**HEARING OFFICER'S REPORT ON
OBJECTIONS WITH FINDINGS AND RECOMMENDATIONS¹**

This report contains my recommendations on the Employer's objections. As discussed below, I recommend that both objections be overruled. If my recommendations are adopted, this recommendation would lead to the issuance of a Certification of Representative.

Procedural Background

Pursuant to a Stipulated Election Agreement approved on June 24, 2012,² a secret ballot election was conducted on July 26 among the employees in the following bargaining unit:

All full-time and regular part-time level 1, level 2, and level 3 customer service support technicians employed by the Employer at its Potsdam, New York location; excluding all office clerical employees, confidential employees, guards, and professional employees and supervisors as defined in the Act.

The Tally of Ballots prepared at the conclusion of the election revealed that of approximately 44 eligible voters, 28 cast ballots, of which 19 were cast for the Petitioner, 9 were cast against the Petitioner, and there were 6 challenged ballots – an insufficient number to affect the results of the election.

¹ Under the provisions of 102.69 of the Board's Rules and Regulations, exceptions to this report must be received by the Board in Washington, D.C. by the close of business on September 26, 2012. Immediately upon the filing of exceptions, the party filing same shall serve a copy on the Regional Director of the Third Region. See 102.69(f) for a fuller statement of requirements. If no exceptions are filed, the Board may adopt the recommendations of the Hearing Officer.

² All dates are 2012 unless otherwise noted. The petition was filed on June 15.

On August 1, the Employer filed timely objections to conduct affecting the results of the election, a copy of which was duly served upon the Petitioner. Following an investigation, conducted pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the Regional Director, on August 13, issued an Order Directing Hearing on Objections. The hearing was rescheduled by Order Changing Time and Location of Hearing to September 6.

Pursuant to the Orders, a hearing was conducted by the undersigned at Massena, New York on September 6. Both parties had full opportunity to be heard, to examine witnesses, and to introduce evidence bearing on the issues. Based on the record developed at the hearing and the post-hearing submissions, I report on the objections and recommend as follows.³

Facts

Objection One: Employer claims that paid union organizers engaged in conduct that interfered with the election process by misrepresenting to employees who were not in favor of the union that, if they decided not to vote, they would be counted as a "no" vote.

Objection Two: Employer claims that the conduct of union organizers, supporters, and/or the Board Agent⁴ interfered with the election process by creating a false impression among the group of 10 employees who had been hired on June 18, 2012 that they were not eligible to vote or that their votes would not be counted.

In support of its objections, the Employer called employee Sherman Taylor. Taylor testified that a Union representative housecalled him in July and tried to persuade him to support the Union.⁵ Taylor related that the organizer (Bono) told him that some employees had been hired recently to try to "stop" the Union. He testified that she told him also that employees who did not vote would be counted as "no" votes in the NLRB election.⁶ Taylor voted in the July 26 election.

Employee Christina Hooper testified that Union representative Vincent Cavo housecalled her on a date in July and informed her that the Employer had hired ten new hires and those new hires could be used "against" the Union in the election. Hooper testified that she does not recall if there was any discussion between them about who would be allowed to vote. Additionally, Hooper testified that after the election was concluded on July 26 she heard it rumored from an employee or employees whose

³ The findings of fact and credibility resolutions contained herein are based on my consideration of the entire record and upon my observations of the testimony and demeanor of the witnesses. Accordingly, any failure to completely detail all conflicts of evidence does not mean that such conflicting evidence was not considered. See *Bishop and Malco, Inc., d/b/a Walker's*, 159 NLRB 1159 (1966).

⁴ The Employer presented no evidence of any sort dealing with the conduct of the Board or a Board agent.

⁵ At the hearing the parties stipulated that the Union agent at issue was organizer Antoinette Bono.

⁶ Bono testified and denied making the remark.

identities she could not recall that failing to vote was equivalent to a "no" vote. Hooper voted in the election.

Employee Cynthia Bowen testified that she attended a Union meeting on July 11. She testified that Union representative Cavo stated at the meeting that the Employer had hired ten new employees recently in order to "stack the deck" against the Union and that Cavo remarked about challenging the eligibility of the new hires. Bowen, who served as one of the election observers, testified that eight of the ten new hires voted in the election. Moreover, Bowen testified that Cavo informed her during the July 11 Union meeting that two employees named Whiteford and Nielson should be eligible to vote.⁷ Bowen testified that both she and Whiteford voted in the election.⁸ Finally, Bowen testified that after the election was concluded she heard it rumored from various unnamed employees that either employees or someone from the Union had indicated vaguely that if employees did not vote in the election such failure to vote would be equivalent to a "no" vote.

Supervisor Matthew Maroun testified that employees Taylor and Hooper approached him on the day of the election and asked him whether or not a failure to vote was the equivalent of a "no" vote. He told the employees that it was not true.

Finally, during the critical period, the Employer's COO Peter Blackmer sent emails to employees informing them about voting procedures. Among the emails sent to employees was an email dated July 18 that reads:

Next week – on July 26 – you will have the opportunity to vote on whether you want to be unionized by the UFCW. It is critical that you vote in the election. If you do not vote, your future at Fused Solutions will be in the hands of your co-workers who do vote! ...Whatever you decide, please be sure to vote!

On July 24 Blackmer emailed employees writing:

The Union election will be held on July 26 from 7 to 9 am and from 4 to 8 p.m. here at Fused. Please make sure to vote!

The election will be decided by a majority of those who vote. If only three people decided to vote, then the future of the company could be decided by two people. No matter whether you are for or against the union or whether you did or didn't sign a union card, you should make sure you exercise your right to be heard.

On July 26, the date of the election, Blackmer emailed employees writing:

Some employees are expressing concern that their ballots are being "challenged" by the union. Please do not let this discourage you from voting. It is important that everyone vote. Any "challenges" will be resolved after the polls close.

⁷ The record is silent about whether or not these two employees were among the ten new hires.

⁸ The record is silent as to whether or not Nielson voted.

Analysis

I recommend that both objections be overruled.

Board representation elections are not lightly set aside. See NLRB v. Hood Manufacturing Company, 941 F.2d 325, 328 (5th Cir. 1991). "The presumption is that ballots cast under the safeguards provided by Board procedure reflect the true desires of the participating employees." See NLRB v. Zelrich Company, 344 F.2d 1011, 1015 (5th Cir. 1965). The "critical period" – the time between the filing of the representation petition and the election – is generally the period during which the Board will consider conduct to be objectionable. See Ideal Electric Manufacturing Co., 134 NLRB 1275 (1961). It is the objecting party's burden to demonstrate that conduct occurred during the critical period. See Accubuilt, Inc., 340 NLRB 1337 (2003). In evaluating party conduct during the critical period, the Board applies an objective standard, under which conduct is found to be objectionable if it has "the tendency to interfere with the employees' freedom of choice." See Cambridge Tool and Mfg. Co., Inc., 316 NLRB 716, 716 (1995). In deciding whether such interference has occurred, the Board considers: (1) the number of incidents of misconduct; (2) the severity of the incidents and whether they were likely to cause fear among employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election date; (5) the degree of persistence of the misconduct in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; (9) the degree to which the misconduct can be attributed to the party. See also Cedars Sinai Medical Center, 342 NLRB 596, 597 (2004).

The Board has found that an election may be set aside based on the conduct of a party that causes employees to be unable to vote. For example, see Wagner Electric Corp. 125 NLRB 834, 836 (1959) (Employer's conduct in having doors to voting area closed and its related statements to an employee about how to access the voting room caused employees to become confused and fail to vote rendering the election set aside). See also Acme Bus Corp., 316 NLRB 274, 274-275 (1995) (Board will set aside an election where the conduct of a party to the election causes employees to be disenfranchised, but it will do so only if the ballots of those employees could be determinative. The mere showing of a "mathematical possibility" that the number of nonvoting employees could affect the outcome does not suffice. It must be proven with evidence). In Sahuaro Petroleum & Asphalt Co., 306 NLRB 586, 586-587 (1992), the Board observed:

Where the conduct of a party to the election causes an employee to miss the opportunity to vote, the Board will find that to be objectionable if the employee's vote is determinative and the employee was disenfranchised through no "fault" of his own. Versail Mfg., 212 NLRB 592, 593 (1974). When an employee is prevented from voting by reason of sickness or some other

unplanned occurrence beyond the control of a party or the Board, the inability to vote is not a basis for setting aside the election.

In the instant matter, the record is devoid of the name of any employee who did not cast a ballot or who was otherwise impermissibly interfered with based on anything the Union's representatives or agents said or did. I will discuss the testimony of each witness below.

Employee Taylor testified that the Union's representative Bono told him that employees who did not vote would be counted as "no" votes. I do not credit Taylor. In this regard, Taylor vacillated in his testimony on other matters rendering his testimony on this critical point to be suspect. He testified variously that he had, had not, and could not remember seeing the July 18 email sent by the Employer's COO dealing with the NLRB election. Alternatively, even if one credits Taylor that the remark that he attributed to Bono was made, the record disclosed that Taylor voted. The record is devoid of the name of any other employee to whom Taylor might have disseminated Bono's alleged statement. As such, nothing contained in Taylor's testimony warrants setting aside the election.

Employee Christina Hooper testified that Cavo told her that the Union was taking the position that the Employer hired some newer employees for the purpose defeating the Union in the election – a point of view the Union was perfectly free to take. She related no evidence of any discussion about who would be allowed to vote. Lastly, she discussed rumors she heard circulated from unnamed employees that failing to vote was equivalent to a "no" vote. She presented no specific evidence beyond that claim. As such, her testimony does not warrant setting aside the election.

Employee Cynthia Bowen related similarly that Cavo articulated the Union's view that some employees were hired for the purpose of defeating the Union. Notably, she related that the Cavo told her that the Union would challenge the eligibility of these new hires – something entirely permissible per the Board's procedures. Beyond that, Bowen testified that Cavo was urging that two other employees should be eligible – a statement seemingly at odds with the Employer's objections that the Union was attempting to depress turnout by making misrepresentations about eligibility. Lastly, Bowen's testimony that some unnamed employees were discussing mistaken beliefs about the Board's representation process after the election is insufficient to set aside the election. Her testimony about what was said is vague, unclear as to who circulated the rumor, and devoid of the name of any employee who did not vote or who was otherwise interfered with even if the conversation about which she testified occurred.

Supervisor Maroun's testimony is similarly insufficient to warrant setting aside the election. He told two employees who voted that they were mistaken if they believed that not voting was the same as voting "no" in the election.

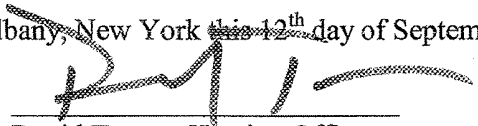
If more is needed, the Employer's three emails reproduced above reveal that the Employer sought to correct any misapprehensions held by employees.

The cases cited by the Employer in its post-hearing submission are distinguishable or irrelevant. Crown Coach Corp. 284 NLRB 1010 (1987) involved an election being set aside where one of the parties made various deportation threats to unit employees in a context of threats and acts of violence. There is no evidence in the instant matter that any employee was improperly interfered with because of statements or conduct attributed to the Union. Further, Omni Waste Services, Inc. (NLRB Division of Judges June 10, 2011) (Case 22-RD-1552) is inapplicable as well.⁹ The cited case involved a claim that a union representative contributed to employees arriving late at the polls. No similar misconduct is at issue in the present case as there is no evidence that the Union engaged in any act that kept employees from casting a ballot. In NLRB v. Kentucky Tennessee Clay Co., 295 F.3d 436 (2002), the Board's petition to enforce its Decision and Order to bargain following a representation election was denied. The cited case involved various threats made by some employees to other employees who failed to support the union. The court decided that the employees' threats were attributed to the Union as the employees were agents of the Union and that the statements at issue contributed to an atmosphere of fear and confusion that warranted setting aside the election. Again, in the present matter, there is no evidence of any employee who was kept from voting by conduct that can be attributed to the Union. Lastly, in NLRB v. Citywide Insulation of Madison, Inc., 370 F.3d 654 (2004), a Board order to bargain was enforced where in the underlying representation case the employer had argued the some employees became "confused" by a cancelled and rescheduled election and this confusion purportedly affected voting behavior. The cited case has no material bearing on the instant matter as there is no evidence that the Union engaged in the objectionable conduct as alleged.

Conclusions and Recommendations

Based on the above, I recommend that the Employer's objections be overruled and that a Certification of Representative issue.

DATED at Albany, New York ~~this 12th~~ day of September 2012


David Turner, Hearing Officer
National Labor Relations Board
Third Region, Albany Resident Office
Leo W. O'Brien Federal Building, Room 342
Clinton Avenue and North Pearl Street
Albany, New York 12207

⁹ The Board issued a certification of representative in the case on August 16, 2011.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 03**

FUSED SOLUTIONS, LLC

and

UNITED FOOD AND COMMERCIAL
WORKERS, DISTRICT UNION LOCAL ONE

Case 03-RC-083193

I, the undersigned employee of the National Labor Relations Board, state under oath that on September 12, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

MICHAEL RYAN, CEO
FUSED SOLUTIONS, LLC
51 MAIN ST
STE 100
POTSDAM, NY 13676-6007

GLENN ISRAEL, ESQ.
BERNSTEIN SHUR
100 MIDDLE ST
P. O. Box 9729
PORTLAND, ME 04101-4100

LINDA D. MCGILL, ESQ.
BERNSTEIN SHUR
100 MIDDLE ST
P. O. Box 9729
PORTLAND, ME 04101-4100

VIRGINIA GETTMAN, ESQ.
PEASE AND GUSTAFSON, LLP
40 MAIN ST
MASSENA, NY 13662-1931

ROBERT E. SMITH, ESQ., General Counsel
UNITED FOOD AND COMMERCIAL
WORKERS, DISTRICT UNION LOCAL
ONE
5911 AIRPORT RD
ORISKANY, NY 13424-3904

National Labor Relations Board
Attn: Executive Sec
1099 14th Street N.W.
Washington, DC 20570

September 12, 2012

Date

LOUIS F. PORTO, Designated Agent of
NLRB

Name

/s/LOUIS F. PORTO

Signature

Exhibit E

NATIONAL LABOR RELATIONS BOARD

REGION THREE

Fused Solutions, LLC)	
)	
Employer)	
)	Case No. 03-RC-083193
and)	
)	
UFCW Local One)	
)	
Petitioner)	

EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT

Fused Solutions, LLC ("Fused"), by its undersigned counsel, hereby submits the following exceptions to the Hearing Officer's Report on Objections with Findings and Recommendations dated September 12, 2012. The Board should reject the proposed conclusions and recommendations of the Hearing Officer because the legal analysis employed in reaching those conclusions and recommendations is flawed.

The Hearing Officer reasoned that, because none of the cases cited by Fused in support of its objections to the election was factually identical to the circumstances that existed during the Fused election, there were insufficient grounds to set aside the election. The cases were supplied to the Hearing Officer to illustrate the appropriate decisional standard -- not to imply that the facts if the instant case are identical to those of the cases cited. In the instant case, the election should be set aside because the Union's actions destroyed the "laboratory conditions" required for a fair election and because it is probable that the Union's actions also disenfranchised a number of voters. *See N.L.R.B. v. Kentucky Tennessee Clay Co.*, 295 F.3d 436, 441-42 (4th Cir. 2002) (election must be set aside if union's conduct had a probable effect upon employees); *N.L.R.B. v. City Wide Insulation of Madison, Inc.*, 370 F.3d 654, 658-59 (7th Cir. 2004) (election

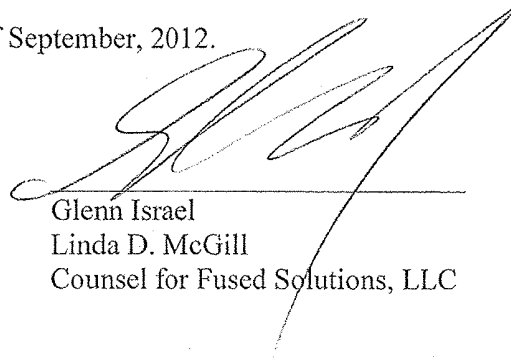
must be set aside if number of employees possibly disenfranchised is sufficient to affect outcome).

Based upon the testimony of Sherman Taylor (a bargaining unit employee) who stated that he had been told by a paid union organizer that, if he was not in favor of the Union he didn't have to vote because those employees who didn't vote would be counted as "No" votes and upon the testimony of Christina Hooper and Cynthia Bowen (two other bargaining unit members) who testified that they heard on election day from a number of other employees that they understood that failing to vote was the equivalent of a "No" vote, the Hearing Officer should have concluded that the Union engaged in conduct that caused a significant number of employees to erroneously believe that they did not need to participate in the election if they were opposed to the Union. Supervisor Matt Maroun corroborated the testimony of two of the bargaining unit members when he testified that Mr. Sherman and Ms. Hooper both approached him on election day and asked him whether a failure to vote was equivalent to a "No" vote. As would be expected, the paid Union organizer identified by Mr. Sherman denied making any misleading statements. However, given the fact that the three bargaining unit employees who were subpoenaed to testify had no reason to lie, the fact that the testimony of two of those witness was corroborated by a third witness, and the fact that the paid Union organizer had no reason to confess to misconduct, the only reasonable interpretation of this evidence is that the Union made misleading statements to eligible voters that caused them to believe that, if they did not support the Union, they did not need to vote.

The remaining question is whether there is a probability that those misleading statements affected the conduct of a sufficient number of employees to affect the outcome of the election. Only 34 of the 44 eligible voters participated in the election. Of the 34 ballots that were cast, 19

were cast in favor of the Union, 9 were cast against the Union, and 6 were challenged. If just 4 of the 10 employees who did not vote had voted against the Union, the challenged ballots would have been determinative and would have been counted. Thus, the confusion or disenfranchisement of just 4 voters by the Union's misleading statements could have affected the outcome of the election. Under these circumstances, the election must be set aside.

Dated at Portland, Maine this 25th day of September, 2012.



Glenn Israel
Linda D. McGill
Counsel for Fused Solutions, LLC

Bernstein Shur
100 Middle Street, P.O. Box 9729
Portland, ME 04104-5029
(207) 774-1200

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 03

FUSED SOLUTIONS, LLC, Employer, And, UNITED FOOD AND COMMERCIAL WORKERS, DISTRICT UNION LOCAL ONE, Petitioner.	Case No. 03-RC-083193
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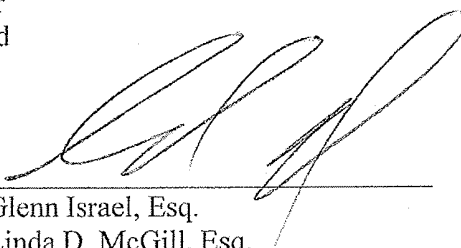
CERTIFICATE OF SERVICE

The undersigned counsel for the Employer hereby certifies that he has made service of the *Employer's Exceptions to Hearing Officer's Report* by forwarding same by electronic mail to Petitioner's counsel, and the Regional Director as follows:

Robert F. Smith, Esq., General Counsel
United Food and Commercial Workers,
District Union Local One
robert_smith@ufcwny.com

Rhonda Ley, Regional Director
National Labor Relations Board
vallana.harris@nlrb.gov

Dated September 25, 2012



Glenn Israel, Esq.
Linda D. McGill, Esq.
Bernstein Shur
100 Middle Street
PO Box 9729
Portland, ME 04104-5029
207-774-1200
gisrael@bernsteinshur.com
lmcgill@bernsteinshur.com

Exhibit F

NOT TO BE INCLUDED
IN BOUND VOLUMES

PGB
Potsdam, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FUSED SOLUTIONS, LLC

Employer

and

Case 03-RC-083193

UNITED FOOD AND COMMERCIAL WORKERS,
DISTRICT UNION LOCAL ONE

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board has considered objections to an election held July 26, 2012, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 19 for and 9 against the Petitioner, with 6 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions,¹ has adopted the hearing officer's findings and recommendations, and finds that a certification of representative should be issued.

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers, District Union Local One and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time level 1, level 2, and level 3 customer service support technicians employed by the Employer at its Potsdam, New York location; excluding all office clerical employees, confidential employees, guards, and professional employees and supervisors as defined in the Act.

Dated, Washington, D.C., January 11, 2013.

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

Exhibit G

HEADQUARTERS:
5911 Airport Road
Oriskany, NY 13424
PHONE (315) 797-9600
TOLL-FREE 1-800-697-8329
FAX (315) 793-1182

DISTRICT OFFICE:
150 Lawrence Bell Dr., Ste. 104
Buffalo, NY 14221-7894
PHONE (716) 631-8777
TOLL-FREE 1-800-421-0120
PA 1-800-733-3140

UFCW

District Union Local One

UNITED FOOD & COMMERCIAL WORKERS

January 15, 2013

Mr. Mike Ryan, CEO
Fused Solutions
51 Main Street, Suite 100
Potsdam NY 13676

Dear Mr. Ryan:

As you are aware, we have been certified by the National Labor Relations Board to represent employees at Fused Solutions for the purpose of collective bargaining as of January 11, 2013.

So that we may prepare for negotiations, please forward the following information:

- A.
 - 1.) Employee's Name
 - 2.) Employee's Rate of Pay
 - 3.) Employee's Job Classification
 - 4.) Employee's date of hire
 - 5.) Employee's date of birth
 - 6.) Employee's status (full time and part time)
- B.
 - 1.) Total hours worked per employee over the last 12-month period.
 - 2.) Overtime Hours worked over the last 12-month period.
- C.
 - 1.) A copy of all current company personnel policies, practices or procedures including any statements or descriptions regarding such personnel policies, practices or procedures.
 - 2.) A copy of all company fringe benefit plans including, pension, profit sharing, severance, stock incentive, vacation, health and welfare, 401k Plan, legal services, child care or any other plans which relate to the employees.
 - 3.) Copies of all current job descriptions.
- D. Copies of any Company Wage or Salary Plans.
- E. Identify each employee's choice of health care.
- F. Cost per month per employee to the employee who selects Health Insurance.
- G. Cost per month per employee to the employer to provide Health Insurance.

Frank C. DeRiso
INTERNATIONAL VICE PRESIDENT
PRESIDENT, UFCW LOCAL ONE

Eric A. Glathar
SECRETARY-TREASURER

Gregory P. Gorea
EXECUTIVE ASSISTANT TO
THE PRESIDENT/RECORDER

If possible, within ten (10) days of receipt of this letter, please forward this information by mail in an electronic format on diskette that is compatible with Excel Spreadsheet Software or e-mail this information to amalfiboy56@yahoo.com. Additionally, on an ongoing basis, please provide any new or updated information that may become available after these requests have been answered.

Thank you for your prompt attention in the above matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vincent J. Cavo".

Vincent J. Cavo
Director of Organizing

lmk

Certified mail: 9171 9690 0935 0009 6416 45

c: Frank DeRiso
Eric Glathar
Greg Gorea
Robert Smith, Esq.
Mike Furner

Exhibit H

HEADQUARTERS:
5911 Airport Road
Oriskany, NY 13424
PHONE (315) 797-9600
TOLL-FREE 1-800-697-8329
FAX (315) 793-1182

DISTRICT OFFICE:
150 Lawrence Bell Dr., Ste. 104
Buffalo, NY 14221-7894
PHONE (716) 631-8777
TOLL-FREE 1-800-421-0120
PA 1-800-733-3140

UFCW

District Union Local One

UNITED FOOD & COMMERCIAL WORKERS

January 30, 2013

Mr. Mike Ryan, CEO
Fused Solutions
51 Main St, Suite 100
Potsdam NY 13676

Dear Mr. Ryan:

I am in receipt of Ms. Fisher's email dated January 25, 2013 requesting additional time to complete our request for information. This matter has been delayed long enough and with all due respect, the information we are asking for should not be something that requires any significant delay in getting it to us.

Accordingly, I am requesting that the information in my January 15th letter be provided to me on or before February 11th; In addition, I am providing you with dates in order to schedule times and a location for us to meet to begin negotiating an initial collective bargaining agreement. In that regard, I am available to meet on any of the following dates: February 22, 25, 26, 27, 28 or March 1. Please advise me which of the foregoing dates is available to you. As a last matter, please provide me with the times and a location where you would like to meet so that I can discuss your suggestion with the negotiating committee.

I would appreciate a prompt response so that we can move forward with this important process. Thank you in advance for your cooperation.

Sincerely,



Vincent J. Cavo
Director of Organizing

CERTIFIED MAIL
lmk

cc: Frank DeRiso
Eric Glathar
Greg Gorea
Bob Boehlert
Mike Furner
Kim Fisher Senior Dir. of Human Resources

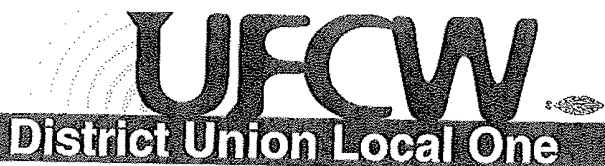
Frank C. DeRiso
INTERNATIONAL VICE PRESIDENT
PRESIDENT, UFCW LOCAL ONE

Eric A. Glathar
SECRETARY-TREASURER

Gregory P. Gorea
EXECUTIVE ASSISTANT TO
THE PRESIDENT/RECORDER

HEADQUARTERS:
5911 Airport Road
Oriskany, NY 13424
PHONE (315) 797-9600
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DISTRICT OFFICE:
150 Lawrence Bell Dr., Ste. 104
Buffalo, NY 14221-7894
PHONE (716) 631-8777
TOLL-FREE 1-800-421-0120
PA 1-800-733-3140



UNITED FOOD & COMMERCIAL WORKERS

January 30, 2013

Ms. Kimberly Fisher
Senior Director of Human Resources
Fused Solutions
51 Main Street, Suite 100
Potsdam NY13676

Dear Ms. Fisher:

You will be receiving a letter from me shortly. However, what I need from you immediately is a list of all current employees along with home addresses and phone numbers, and work schedules for the next two (2) weeks.

As you are aware, as the bargaining representative for these employees, we have a legal right to this information and I would appreciate a response to let me know when I could expect to receive it.

Please provide this information as an attachment in an email to the following address: amalfiboy56@yahoo.com.

Thank you for your prompt attention in the above matter.

Sincerely,

A handwritten signature in cursive script that reads "Vincent J. Cavo".

Vincent J. Cavo
Director of Organizing

lmk

c: Robert Smith, Esq.
Mike Furner

Frank C. DeRiso
INTERNATIONAL VICE PRESIDENT
PRESIDENT, UFCW LOCAL ONE

Eric A. Glathar
SECRETARY-TREASURER

Gregory P. Gorea
EXECUTIVE ASSISTANT TO
THE PRESIDENT/RECORDER

Exhibit I

BOND SCHOENECK & KING

111 Washington Avenue | Albany, NY 12210-2211 | bsk.com

MICHAEL D. BILLOK, ESQ.
mbillok@bsk.com
P: 518.533.3236
F: 518.533.3284

February 15, 2013

VIA EMAIL TO AMALFIBOY56@YAHOO.COM AND UPS OVERNIGHT

Vincent J. Cavo, Director of Organizing
United Food and Commercial Workers Unit One
5911 Airport Road
Oriskany, NY 13424-3904

Re: *UFCW's letters of January 15, 2013 and January 30, 2013*

Dear Mr. Cavo:

We represent Fused Solutions, LLC. We are in receipt of your letters referenced above.

Fused Solutions, LLC does not believe that the National Labor Relations Board's certification of UFCW Local One as the bargaining representative was proper. Accordingly, the Company declines your request to negotiate and must also decline your request for information.

Very Truly Yours,

BOND, SCHOENECK & KING, PLLC



Michael D. Billok, Esq.

MDB/MDB

cc: Michael Ryan

296379.2 2/15/2013

Exhibit J

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE	
Case 03-CA-098461	Date Filed 2/15/2013

INSTRUCTIONS:

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT		
a. Name of Employer Fused Solutions, LLC		b. Number of workers employed 75
c. Address (street, city, state, ZIP code) 51 Main Street, Suite 100 Potsdam NY 13676	d. Employer Representative Michael Ryan, CEO	e. Telephone No. 877-754-2998 Fax No. 315-265-3268
f. Type of Establishment (factory, mine, wholesaler, etc.) Call Center	g. Identify principal product or service Customer Service	
h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections(1) and (list subsections) <u>8(a) 1, 8(a) 5</u> of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.		
2. Basis of Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)		
<p>At all times relevant hereto, the United Food and Commercial Workers District Union Local One ("Local One") a labor organization, has been the exclusive bargaining representative of employees in an appropriate bargaining unit in accordance with Section 9(a) of the Act.</p> <p>Since on or about a date six months from the filing of this charge and at all times thereafter, Fused Solutions, by its officers, agents and representatives has refused to bargain in good faith with Local One by but not limited to failing to schedule and meet at reasonable times to commence negotiations for a collective bargaining agreement and by failing to provide Local One with necessary information that has been requested in order for Local One to prepare for negotiations.</p>		
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) United Food and Commercial Workers District Union Local One		
4a. Address (street and number, city, state, and ZIP code) 5911 Airport Road Oriskany NY 13424	4b. Telephone No. 315-797-9600 Fax No. 315-793-1182	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) United Food and Commercial Workers International Union		
6. DECLARATION		
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		
By <u>Robert E. Smith</u> Robert E. Smith, Esq. (signature of representative or person making charge)		General Counsel (title, if any) 315-797-9600 (Telephone No.) 315-793-1182 (Fax No.)
Address 5911 Airport Road, Oriskany NY 13424		2/15/2013 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

Exhibit K

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE**

FUSED SOLUTIONS, LLC

and

Case 03-CA-098461

**UNITED FOOD AND COMMERCIAL
WORKERS, DISTRICT UNION LOCAL ONE**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by United Food and Commercial Workers, District Union Local One (Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (Board) and alleges that Fused Solutions, LLC (Respondent) has violated the Act as described below:

I

The charge in this proceeding was filed by the Union on February 15, 2013, and a copy was served by regular mail on Respondent on the same date.

II

(a) At all material times, Respondent has been a limited liability company, with an office and place of business in Potsdam, New York, (Respondent's facility) where it operates a call center.

(b) Annually, Respondent, in conducting its operations described above in paragraph, II(a), purchases and receives at its Postdam, New York facility goods valued in excess of \$50,000 directly from points outside the State of New York.

III

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

IV

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

V

(a) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Michael Ryan	—	CEO
--------------	---	-----

Kimberly Fisher	—	Senior Director of Human Resources
-----------------	---	------------------------------------

(b) At all material times, an unnamed attorney has held the position of Respondent's legal counsel and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

VI

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Level 1, Level 2, and Level 3 customer service support technicians employed by Respondent at its Potsdam, New York location; excluding all office clerical employees, confidential employees, guards, and professional employees and supervisors as defined in the Act.

(b) On July 26, 2012, a representation election was conducted among the employees in the Unit and, on January 11, 2013, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(c) At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

VII

(a) About January 30, 2013, the Union, by letter, requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(b) Since about February 15, 2013, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

VIII

(a) About January 15 and 30, 2013, the Union, by letters, requested that Respondent furnish it with the information set forth in Appendix A and B, attached hereto.

(b) The information requested by the Union, as described above in paragraph VIII(a) is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about February 15, 2013, Respondent, in writing, has failed and refused to furnish the Union with the information requested in Appendix A and B, attached hereto.

IX

By the conduct described above in paragraphs VII and VIII(a) and (c), Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

X

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above in paragraph VII, the Acting General Counsel seeks an order requiring Respondent to bargain in good faith with the Union, on request, for the period required by Mar-Jac Poultry, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The Acting General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Complaint. The answer must be **received by this office on or before March 8, 2013 or postmarked on or before March 7, 2013.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

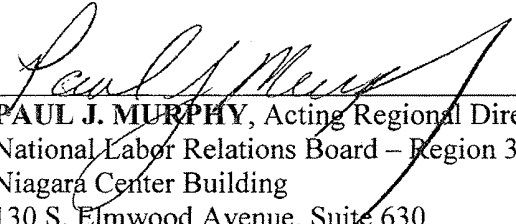
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations

require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT, at a time and date to be determined in the future, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Buffalo, New York, this 22nd day of February 2013.


PAUL J. MURPHY, Acting Regional Director
National Labor Relations Board – Region 3
Niagara Center Building
130 S. Elmwood Avenue, Suite 630
Buffalo, New York 14202

Attachments

Exhibit L

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE**

FUSED SOLUTIONS, LLC

and

Case 03-CA-098461

**UNITED FOOD AND COMMERCIAL
WORKERS, DISTRICT UNION LOCAL ONE**

ANSWER TO COMPLAINT

Fused Solutions, LLC (Respondent), by its undersigned attorneys, for its Answer to the Complaint and Notice of Hearing filed by the Acting General Counsel of the National Labor Relations Board, states as follows:

GENERAL DENIAL

Except as otherwise expressly stated herein, Respondent denies each and every allegation contained in the Complaint, including, without limitation, any allegations contained in the preamble, headings, or subheadings of the Complaint, and Respondent specifically denies that it violated the National Labor Relations Act in any of the manners alleged in the Complaint or in any other manner. Pursuant to Section 102.20 of the Board's rules, averments in the Complaint to which no responsive pleading is required shall be deemed as denied. Respondent expressly reserves the right to seek to amend and/or supplement its Answer as may be necessary.

DEFENSES

Without assuming any burden of proof, persuasion, or production not otherwise legally assigned to it as to any element of the claims alleged in the Complaint, Respondent asserts the following defenses.

1. The Complaint and each purported claim for relief stated therein fail to allege facts sufficient to state a claim upon which relief may be granted.

2. The Board has lacked a quorum since August 27, 2011, and therefore had no power or authority to overrule respondent's objections to the election conducted on July 26, 2012.

3. The Board has lacked a quorum since August 27, 2011, and therefore had no power or authority to certify the election or a bargaining unit representative on January 11, 2013.

4. The Board continues to lack a quorum, and therefore has no power or authority to act in any capacity until it obtains a quorum of properly appointed members.

5. Respondent has not violated Section 8(a)(1) of the Act because it has not interfered with, restrained, or coerced employees in the exercise of any right protected by the Act.

6. Respondent has not violated Section 8(a)(5) of the Act because it has not refused to bargain collectively with any properly certified representative of its employees.

7. The remedy requested by the Regional Director is improper because Respondent has not violated Section 8(a)(1) or Section 8(a)(5) of the Act.

8. The remedy requested by the Regional Director is impermissibly punitive and would cause an undue hardship on Respondent and its employees.

9. The Complaint is *ultra vires* because the Regional Director did not lawfully hold the office of Regional Director of Region 3 at the time she directed that the Complaint be filed.

10. The Regional Director continues not to lawfully hold the office of Regional Director of Region 3, and therefore continues to have no authority to seek any relief as requested in the Complaint.

11. The Regional Director did not lawfully hold the office of Regional Director of Region 3 at the time that respondent's objections to the election conducted on July 26, 2012 were overruled.

12. The Complaint is *ultra vires* because the Acting General Counsel of the NLRB did not lawfully hold the office of Acting General Counsel at the time he directed that the Complaint be filed.

13. The Acting General Counsel of the NLRB continues not to lawfully hold the office of Acting General Counsel, and therefore continues to have no authority to seek any relief as requested in the Complaint.

RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

Incorporating the foregoing, Respondent states as follows in response to the specific allegations in the Complaint:

1. Respondent admits that the first unnumbered paragraph of the Complaint asserts the claims and bases for jurisdiction, but denies that Respondent has violated the Act.

2. Respondent admits the allegations in paragraph I, but denies the merit of the charge filed by the Union.

3. Respondent admits the allegations in paragraph II(a).

4. Respondent admits the allegations in paragraph II(b).

5. Respondent admits the allegations in paragraph III.

6. Respondent admits the allegations in paragraph IV.

7. Respondent admits the allegations in paragraph V(a).

8. Respondent denies the allegations in paragraph V(b).

9. The allegation in paragraph VI(a) contains a legal conclusion to which no response is required and Respondent therefore denies the allegation; to the extent the paragraph alleges that the NLRB properly certified a collective-bargaining unit on January 11, 2013, Respondent denies the allegation.

10. Respondent admits the allegations in paragraph VI(b) that a purported representation election was conducted on July 26, 2012 and that the National Labor Relations Board attempted to issue a purported certification of a collective bargaining Unit on January 11, 2013, but denies the propriety and veracity of the election, denies the National Labor Relations Board properly certified the election, denies that the Union was certified as a collective bargaining representative of any employees, and denies the remaining allegations in paragraph VI(b).

11. The allegation in paragraph VI(c) contains a legal conclusion to which no response is required and Respondent therefore denies the allegation; to the extent the paragraph alleges that the Board properly certified a collective-bargaining unit on January 11, 2013, Respondent denies the allegation.

12. Respondent admits receiving Attachment A to the Complaint, denies the Union's allegation that it is a properly certified collective-bargaining representative of any of Respondent's employees, and denies the remaining allegations in paragraph VII(a).

13. Respondent admits that it does not recognize the Union as a properly certified collective-bargaining representative of any of Respondent's employees and that it is refusing to bargain with the Union, and denies the remaining allegations in paragraph VII(b).

14. Respondent admits the allegations in paragraph VIII(a).

15. Respondent denies the allegations in paragraph VIII(b).

16. Respondent admits that it has refused to furnish the Union with the information requested in Attachments A and B to the Complaint, and denies the remaining allegations in paragraph VIII(c).

17. Respondent admits that it does not recognize the Union as a properly certified collective-bargaining representative of any of Respondent's employees and that it is refusing to bargain with the Union, denies that these actions violate Section 8(a)(1) or 8(a)(5) of the Act, and denies the remaining allegations in paragraph IX.

18. Respondent denies the allegations in paragraph X.

19. Respondent denies that it has conducted any unfair labor practices, and accordingly denies that the requested orders or actions are warranted.

20. Respondent denies that the Acting General Counsel or Regional Director is entitled to or can request, or that the Board can order, the orders or remedies requested.

21. Respondent denies any allegations not specifically denied herein.

Respondent reserves the right to raise any additional defenses not asserted herein of which it may become aware through investigation, as may be appropriate at a later time.

Dated: March 14, 2013

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: 

Michael D. Billok

Attorney for Respondent

111 Washington Avenue

Albany, NY 12210-2280

Telephone: (518) 533-3236

Facsimile: (518) 533-3284

Email: mbillok@bsk.com

TO: Gregory Lehmann, Field Attorney
National Labor Relations Board
Leo W. O'Brien Federal Bldg.
Room 342
Clinton Ave. and N. Pearl St.
Albany, NY 12207

Robert E. Smith, Esq., General Counsel
United Food and Commercial Workers Local One
5911 Airport Road
Oriskany, NY 13424

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE**

FUSED SOLUTIONS, LLC

and

Case 03-CA-098461

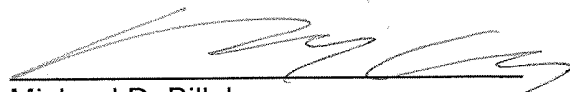
**UNITED FOOD AND COMMERCIAL
WORKERS, DISTRICT UNION LOCAL ONE**

AFFIDAVIT OF SERVICE

I hereby certify that on March 14, 2013, I electronically filed Respondent's Answer with the National Labor Relations Board using the NLRB E-Filing system, and served a signed PDF of Respondent's Answer by e-mail as well as by First Class Mail to the following:

Gregory Lehmann, Field Attorney
National Labor Relations Board
Leo W. O'Brien Federal Bldg., Room 342
Clinton Avenue and No. Pearl Street
Albany, NY 12207
Gregory.lehmann@nlrb.gov

Robert E. Smith, Esq., General Counsel
United Food and Commercial Workers Local One
5911 Airport Road
Oriskany, NY 13424
Robert.smith@ufcwny.com


Michael D. Billok
BOND, SCHOENECK & KING, PLLC
Attorneys for Respondents
111 Washington Avenue
Albany, New York 12210-2280
Telephone: (518) 533-3236
Facsimile: (518) 533-3284

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THREE**

FUSED SOLUTIONS, LLC

and

Case No. 03-CA-098461

**UNITED FOOD AND COMMERCIAL
WORKERS, DISTRICT UNION LOCAL ONE**

AFFIDAVIT OF SERVICE

I hereby certify that on April 19, 2013, I electronically filed the foregoing Opposition to Motion for Summary Judgment using the NLRB E-Filing system, and served a signed PDF by e-mail to the following:

Gregory Lehmann, Field Attorney
National Labor Relations Board
Leo W. O'Brien Federal Bldg., Room 342
Clinton Avenue and No. Pearl Street
Albany, NY 12207
Gregory.lehmann@nrlrb.gov

Robert E. Smith, Esq., General Counsel
United Food and Commercial Workers Local One
5911 Airport Road
Oriskany, NY 13424
Robert.smith@ufcwny.com

/s Michael D. Billok

Michael D. Billok
BOND, SCHOENECK & KING, PLLC
Attorneys for Respondents
111 Washington Avenue
Albany, New York 12210-2280
Telephone: (518) 533-3236
Facsimile: (518) 533-3284